

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-06-SE-288
Doss Aviation Inc.)	NAL/Acct. No. 200732100030
Corpus Christi, Texas)	FRN # 0015068026
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 11, 2007

Released: May 15, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Doss Aviation Inc. (“Doss”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WPPZ915, in Corpus Christi, Texas, apparently liable for a forfeiture in the amount of five thousand, two hundred dollars (\$5,200) for apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”).² The noted apparent violations involve Doss’ operation of a PLMRS station without Commission authority and its failure to file a timely renewal application for the station.

II. BACKGROUND

2. Doss was granted a PLMRS station license under call sign WPPZ915 on April 11, 2000, with an expiration date of April 11, 2005. Doss failed to file for renewal of the station’s license and the license expired on its own terms on April 11, 2005.³ On May 18, 2006, Doss filed a request for Special Temporary Authority (“STA”) to continue operating its PLMRS station. The Wireless Telecommunications Bureau granted Doss STA to continue operating the station under call sign WQEY747 on May 19, 2006.⁴ On June 2, 2006, Doss filed an application for a new PLMRS station license. The Wireless Telecommunications Bureau granted Doss a new license under call sign WQFA992 on June 6, 2006.⁵

3. Because it appeared that Doss may have operated the PLMRS station after the expiration of its license under call sign WPPZ915, the Wireless Telecommunications Bureau referred this case to the

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a) and 1.949(a).

³ “Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.” 47 C.F.R. § 1.955(a)(1).

⁴ See STA File No. 0002617645 (granted May 19, 2006). The Wireless Telecommunications Bureau granted the STA without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁵ See License File No. 0002638744 (granted June 6, 2006).

Enforcement Bureau for investigation and possible enforcement action. On October 6, 2006, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI")⁶ to Doss to investigate whether it operated without authority.

4. In its October 13, 2006 response to the LOI,⁷ Doss stated that it first became aware that its license under call sign WPPZ915 had expired on or about May 17, 2006 when it received a letter from a frequency coordinator stating that the license for call sign WPPZ915 had been terminated by the FCC.⁸ Doss stated that it had not received any correspondence from the FCC at its current address and that mail from the FCC should have been forwarded from its old address to its current address. Doss also admitted that it continued to operate the station beyond the license expiration date without Commission authorization.⁹ Specifically, Doss indicated that between the period of April 11, 2005 and "May 9, 2006,"¹⁰ it continuously operated station WPPZ915 "without any malicious intent."¹¹ Doss further explained that once it discovered the expiration of its license, it "immediately applied for a new license to reinstate this call sign."¹²

III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."¹³ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁴

6. As a Commission licensee, Doss was required to maintain its authorization in order to operate its PLMRS station.¹⁵ Doss admitted that it operated the PLMRS station without Commission

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Frank Hunter, President, Doss Aviation Inc. (October 6, 2006).

⁷ See Letter from Frank G. Hunter, President/CEO, Doss Aviation Inc. to Celia Lewis, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 13, 2006).

⁸ *Id.* at 1.

⁹ *Id.*

¹⁰ *Id.* We believe Doss means May 19, 2006, which was the date its STA was granted.

¹¹ *Id.*

¹² *Id.*

¹³ 47 C.F.R. § 1.949(a).

¹⁴ 47 C.F.R. § 1.955(a)(1).

¹⁵ See *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187-18188 (Enf. Bur., Spectrum Enf. Div., 2005) ("SDN") (holding that a licensee "is charged with the responsibility for knowing and complying with the terms of its authorizations..."); *Sierra Pacific Power Company*, Order, 16 FCC Rcd 188, 191 (WTB PSPWD 2001) (holding that "each licensee bears the exclusive responsibility of filing a timely renewal application"); *Alameda-Contra Costa Transit District*, Order, 15 FCC Rcd 24547, 24551 (WTB PSPWD 2000) (holding that "each licensee is responsible for knowing the expiration date of its licenses and submitting a renewal of license application in a timely manner").

authority from the station's license expiration date of April 11, 2005, until "May 9, 2006." By operating its PLMRS station for approximately 13 months without an instrument of authorization, Doss apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Doss also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

7. Section 503(b) of the Act,¹⁶ and Section 1.80(a) of the Rules,¹⁷ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and "repeatedly" means more than once.¹⁸ Based upon the record before us, it appears that Doss's violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁹ Having considered the statutory factors, as explained below, we propose a forfeiture of \$5,200.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority.²⁰ As the Commission has held, a licensee's failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²¹ Accordingly, we herein propose separate forfeiture amounts for Doss's separate violations.

10. Consistent with precedent,²² we propose a \$1,500 forfeiture for Doss's failure to file the

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80(a).

¹⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); see also *WCS Communications, Inc.*, Notice of Apparent Liability, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div., 1998) (finding that a licensee's inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

¹⁹ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁰ 47 C.F.R. 1.80(b).

²¹ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) ("*Discussion Radio*") (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application).

²² See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Imperial Sugar Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987 (Enf. Bur., Spectrum Enf. Div., 2007); *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517 (Enf. Bur., Spectrum Enf. Div., 2006); *Gilmore Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Gilmore*"); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf.

renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the Rules. Additionally, we propose a \$5,000 forfeiture for Doss's continued operation of its PLMRS station after the expiration of its license on April 11, 2005.²³ In proposing a \$5,000 forfeiture for Doss's unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²⁴ Thus, we propose an aggregate forfeiture of \$6,500.

11. As a Commission licensee, Doss is charged with the responsibility of knowing and complying with the terms of its authorization, the Act and the Rules, including the requirement to timely renew the authorization for its PLMRS station.²⁵ Doss' assertions that it never received any correspondence from the FCC because of an address change and that it was unaware that mail sent to its original address would not be forwarded to its new address do not mitigate its violations.²⁶ We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$5,200 is warranted because Doss made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.²⁷

Div., 2006) ("*Criswell*"); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) ("*NWN*"); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Journal Broadcast*"); *SDN*, 20 FCC Rcd at 18187.

²³ Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a NAL. Section 503(b)(6), however, does not bar us from considering Doss's prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *See Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 ¶8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 ¶ 3 (1967), *recon. denied* 11 FCC Rcd 193 (1967). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Doss's apparent violations that have occurred within the past year.

²⁴ *See Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); *see also Gilmore*, 21 FCC Rcd at 6285; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

²⁵ *See Discussion Radio*, 19 FCC Rcd at 7437; *see also Gilmore*, 21 FCC Rcd at 6286-87; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

²⁶ *See Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020-21 (2001); *ACC Network Corp.*, Order, 16 FCC Rcd 22446, 22448 (WTB PSPWD 2001); *WSYX Licensee, Inc.*, Order, 15 FCC Rcd 19084, 19085-86 (WTB PSPWD 2000).

²⁷ *See Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); *see also Gilmore*, 21 FCC Rcd at 6286-87; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,²⁸ Doss **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand, two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Doss **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁹

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Frank G. Hunter, President/CEO, Doss Aviation Inc., P.O. Box 18519, Corpus Christi, Texas 78418.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁸ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁹ See 47 C.F.R. § 1.1914.